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USA v. Geddes

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 06-3335

UNITED STATES OF AMERICA,
Appellee

v.

AARON GEDDES,
Appellant

Appeal from the
United States District Court for the
District of New Jersey
(D.C. No. 02-cr-00705)
District Judge: Honorable Mary L. Cooper

Submitted Under Third Circuit LAR 34.1(a)
December 11, 2007

Before: SLOVITER, AMBRO, Circuit Judges, and RESTANI*, Judge

(Filed: December 20, 2007)

OPINION

*Honorable Jane A. Restani, Chief Judge of the United States Court of International Trade, sitting by designation.

RESTANI, Judge.

This appeal challenges a sentence imposed after remand to apply the United States Sentencing Guidelines in an advisory manner as required by United States v. Booker, 543 U.S. 220 (2005). Defendant Aaron Geddes was found guilty of violation of 18 U.S.C. § 922(g)(1) (felon in possession of a firearm). In calculating the Guidelines range, the District Court imposed a four-level enhancement for using a firearm in connection with another felony. The District Court found that the facts necessary to the enhancement were established by a preponderance of the evidence.

Geddes' sole argument on appeal is that due process requires that if a separate crime is the basis for a sentencing enhancement, the elements of that crime must be found by the trier of fact beyond a reasonable doubt. Sitting en banc, we recently rejected this argument, see United States v. Grier, 475 F.3d 556 (3d Cir. 2007), and held that sentencing enhancements, whether constituting a separate offense or not, do not implicate rights to a jury trial or proof beyond a reasonable doubt.¹ Id. at 567.

Accordingly, we will affirm.

¹Judge Sloviter agrees that Grier represents the law of the Circuit. Nonetheless, she believes that Geddes' argument represents the better view, as set forth in her dissent in Grier.